

### **REMARKS/ARGUMENTS**

The Applicants have carefully considered this Application in connection with the Examiner's Action and respectfully request reconsideration of this Application in view of the foregoing amendment and the following remarks.

The Examiner has indicated that Claims 6, 7 and 13-19 are allowed. The Applicants thank the Examiner.

The Applicants originally submitted Claims 1-19 in the present Application. The Applicants have previously amended Claims 1, 6-8 and 13-14. Accordingly, Claims 1-19 are currently pending in the Application.

#### **I. Rejection of Claims 1-5 and 8-12 under 35 U.S.C. §103**

The Examiner has rejected Claims 1-4 and 8-11 under 35 U.S.C. §103(a) as being unpatentable over United States Patent Application Publication 2002/0143914 A1 to Cihula ("Cihula") in view of *Essential SNMP, First Edition*, by Mauro *et al.* ("Mauro"). The Examiner has rejected Claims 5 and 12 under 35 U.S.C. §103(a) as being unpatentable over Cihula in view of Mauro and in further view of *Interconnections: Bridges, Routers, Switches and Internetworking Protocols, Second Edition* by Perlman ("Perlman").

As discussed in the previous Amendment, filed August 14, 2006, Claim 1 is directed to a system for monitoring link delays and faults in an IP network. The invention of Claim 1 includes a probe message identifier, coupled to a monitoring station identifier that computes a set of probe messages to be transmitted by at least ones of a set of monitoring stations such that delays and

faults *in specific links spanning the set of monitoring stations* can be determined. (Emphasis added).

As also discussed in the previous Amendment, filed August 14, 2006, Cihula is directed to a network-aware policy deployment that uses dynamic information, such as topology, congestion, link bandwidth, error rates, and the like, to purportedly intelligently deploy a policy.

The Examiner states that Cihula does not disclose: “ a probe message identifier, coupled to said monitoring station identifier that computes a set of probe messages to be transmitted by at least ones of said set of monitoring stations such that said delays and faults in specific links spanning said set of monitoring stations can be determined” as is claimed in Claim 1. (Examiner's Action, page 2). The Applicants agree with the Examiner.

However, the Examiner then states:

SNMP contains means for polling remote devices and network connections for traffic problems and other issues (Mauro: “Polling and Thresholds” (¶ 1). A poll message is sent to a device, and the device replies with management information, which is collected and examined for compliance with thresholds. Mauro discloses that this polling can detect capacity issues as well as faults in specific connections (interfaces) (Mauro ¶1 lines 2-4). (Examiner's Action, page 3).

The first paragraph (“¶1”) of Mauro states:

SNMP gives you the ability to poll your devices regularly, collecting their management information. Furthermore, you can tell the NMS that there are certain thresholds that, if crossed, require some sort of action. ... When such a condition occurs, the NMS can forward an alarm to an event-correlation engine or have an icon or an OpenView map flash. To make this more concrete, let's say that the NMS is polling the status of an interface on a router. If the interface goes down, the NMS reports what has happened so the problem can be quickly resolved.

The Applicants respectfully disagree with the Examiner, and respectfully state that an

“interface” of Mauro is not a “specific link” of the invention of Claim 1. For example, in the reference “Cisco BTS 10200 Softswitch Operations and Maintenance Guide [Release 4.5], Chapter 17: SNMP Interface”, (“Cisco”), {which is submitted to the U.S.P.T.O in a Supplemental Information Disclosure Statement, Form 1449, and filed concurrently herewith}, the SNMP Interfaces are denoted as allowing communications between an Element Management System (“EMS”) and a service provider’s Network Management System (“NMS”). The EMS sends SNMP traps to the NMS, and the NMS can query the EMS for specific data elements. To help enable this communication, concerning SNMP Agent functions, which are associated with the EMS, there is detailed a list of collection of statistics and traffic management data functions, status and control functions, SNMP trap reports, and so on.

The SNMP Interfaces are not “specific links spanning said set of monitoring stations” as claimed in independent Claim 1. For instance, as is illustrated in FIG. 4C and 4D of the present Application:

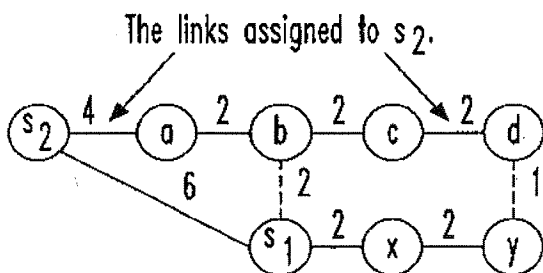


FIG. 4 (c) The RT T s2 of node s 2.

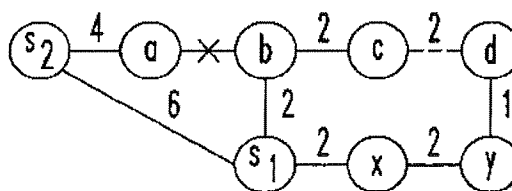


FIG. 4(d) The RTS T si and Ts2 when link (a,b) fails.

the present invention of Claim 1 is directed towards monitoring *specific links* that span a set of monitoring stations. The specific links of the present invention of Claim 1 are simply not the interfaces of Mauro.

Furthermore, regarding dependent Claim 3, the Examiner has characterized Mauro (§7-§8) as standing for the proposition that “the user may specify the poll interval, taking into account such factors as bandwidth restrictions and importance of the components being polled, so user decides the minimal set of polling messages.” (Examiner's Action, page 4).

The Applicants respectfully disagree with the Examiner. The Applicants respectfully state that the Examiner is effectively making an inherency argument, as the Examiner appears to be stating that because an element may be present, that element is present for purposes of an anticipation or obviousness determination. However, according to the M.P.E.P 2112 (IV). “Examiner Must Provide Rationale or Evidence Tending to Show Inherency: The fact that a certain result or characteristic may (Emphasis in *M.P.E.P.*) occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic... ‘In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily (Emphasis again in *M.P.E.P.*) flows from the teachings of the applied prior art.’”

The Applicants hereby challenge the conclusion of the factual assertion that “the user may specify the poll interval, taking into account such factors as bandwidth restrictions and importance of the components being polled, so user decides the minimal set of polling messages.”

Furthermore, according to the M.P.E.P. 2144.03(C), “If Applicant challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence: To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which

would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.”

The Applicants state that a user deciding a minimal set of polling messages could be a computationally intensive process, especially given the higher level of abstraction in SNMP and in SNMP Interfaces. Therefore, the Applicants do not consider this noticed fact to be common knowledge or well known in the art. Also, for analogous reasons, the Applicants do not consider the noticed fact of dependent Claim 9 to be common knowledge or well known in the art as well.

According to the M.P.E.P. 2144.04 (C), “If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanations to support the finding. See 37 CFR 1.104(d)(2).”

Applicants therefore hereby request that the Examiner provide either supporting documentary evidence on the record under the “substantial evidence” standard under the Administrative Procedure Act for the conclusion of the factual assertion that “the user may specify the poll interval, taking into account such factors as bandwidth restrictions and importance of the components being polled, so user decides the minimal set of polling messages. Alternatively, the Applicants request that the Examiner provide an affidavit or declaration setting forth specific factual statements and explanations to support the finding, or withdraw the rejection of Claim 3.

In the Response to Arguments, on page 9-10 of the Examiner's Action, the Examiner states, regarding Mauro ¶1: “For example, you might want to be notified if the traffic at interface jumps to an extremely high (or low) value; that event might signal a problem with the interface, or insufficient

capacity, or even a hostile attack on your network.' This discloses that the polling system is capable of detecting faults or capacity issues at specific links (interfaces) in a network." (Examiner's Action, page 10). The Applicants respectfully disagree. As discussed above, the interfaces of Mauro are simply not the links of the present invention of Claim 1, nor of dependent Claim 3.

Cihula, individually or in combination with Mauro and Perlman, fails to teach or suggest the invention recited in independent Claims 1, and, for at least some similar reasons, independent Claim 8 and their dependent claims, when considered as a whole. Claims 1-5 and 8-12 are therefore not obvious in view of Cihula, Mauro and Perlman.

In view of the foregoing remarks, the cited references do not support the Examiner's rejection of Claims 1-5 and 8-12 under 35 U.S.C. §103(a). The Applicants therefore respectfully request the Examiner withdraw the rejection.

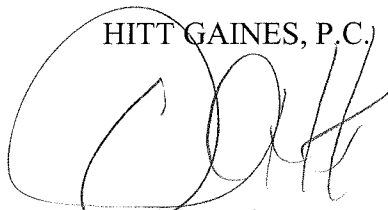
## II. Conclusion

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-19.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395

Respectfully submitted,

HITT GAINES, P.C.

A handwritten signature in black ink, appearing to read 'D. Hitt', is written over the printed name 'HITT GAINES, P.C.' and the name 'David H. Hitt'.

David H. Hitt

Registration No. 33,182

Dated: NOVEMBER 6, 2006

P.O. Box 832570  
Richardson, Texas 75083  
(972) 480-8800